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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re C.K., a Person Coming Under the Juvenile Court
Law.

C077104

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD233538)

Plaintiff and Respondent,

v.

R.K.,

Defendant and Appellant.

R.K., mother of minor C.K., appeals from the juvenile court's orders denying her petition for modification and terminating her parental rights. (Welf. & Inst. Code, §§ 388, 366.26, 395.)¹ On appeal, as she did in the juvenile court, mother claims

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

changed circumstances and also that the beneficial parental relationship exception to adoption applies. Disagreeing, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother delivered the minor prematurely in May 2013. Both mother and the minor tested positive for amphetamines at the time of the birth. Days after the minor was born, mother signed an informal supervision agreement with the Sacramento County Department of Health and Human Services (Department), under which mother was to participate in drug testing and treatment.

Mother continued to use methamphetamine through June and July of 2013. She completed her alcohol and drug assessment at STARS and was offered residential treatment, which she declined. Mother was directed to interim groups at STARS, but failed to attend; she also failed to complete her intake for her four-day drug program. On several occasions during June and July, mother offered to enter into specific treatment facilities, but failed to do so. She was observed more than once to be under the influence of controlled substances during that time period.

On July 11, 2013, the Department filed a section 300 petition on behalf of the minor, based on mother's failure to rehabilitate from her substance abuse problem. The minor was detained and placed in a foster home. On September 3, 2013, the juvenile court found the allegations in the petition true, declared the minor a dependent, and ordered reunification services for mother. Mother was ordered to attend drug court, participate in substance abuse counseling, complete parenting classes, submit to random drug testing, attend a substance abuse program, and attend 12-step meetings on a regular basis. She was also permitted supervised visits twice a week.

Mother had made little to no progress in her services by the time of the six-month review hearing, originally set for February 18, 2014. She had been terminated from drug court and was noncompliant with STARS and outpatient treatment. She missed drug tests; when she tested, she tested positive for methamphetamine. The paternal

grandmother of the minor, with whom mother had been living, reported that mother was still using methamphetamine. She did not attend parenting classes at all or counseling beyond one session. She was not visiting the minor regularly, having cancelled many visits and failed to attend many others without formally cancelling. She had never progressed beyond supervised visits.

At the conclusion of a contested hearing held on March 11, 2014, the juvenile court found mother had failed to complete her court ordered services, was still using drugs and had refused to comply with court ordered treatment alternatives, and did not have stable or suitable housing for the minor. The court terminated mother's services and set a section 366.26 hearing for July 8, 2014.

On May 22, 2014, mother filed a section 388 petition for modification, seeking reinstatement of reunification services. The petition averred that mother had entered a 90-day residential treatment program on May 16, 2014, and that she was progressing in a 12-step program (step two), and was taking parenting classes. The juvenile court set the petition for hearing to be held concurrently with the section 366.26 hearing.

The combined and contested hearing ultimately took place on August 7, 2014. Mother testified that she was on step four of the 12-step program and had been visiting the minor regularly once a month since March 2014. She was fully compliant with the transitional program and had been clean and sober since May 16, 2014. She had a sponsor for the first time and had a good support network. She felt badly about her past drug use and its effect on her daughter, testifying that, "I need to make amends to my daughter because I've . . . kept her mom away from her for the past 13 months."

At the conclusion of the hearing, the juvenile court denied mother's petition, finding mother had shown that her circumstances were changing, but not changed, and that it was not in the minor's best interests to grant the petition. The court found the minor adoptable, found no exceptions to adoption applied, and terminated parental rights. Mother timely appealed.

DISCUSSION

I

Section 388 Petition

Mother first contends that the juvenile court abused its discretion in denying mother's section 388 petition. We disagree.

A. The Law

A petition to modify a juvenile court order under section 388 must allege facts showing that new evidence or changed circumstances exist, and that changing the order will serve the child's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).) In assessing the petition, the court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

We review the denial of a section 388 petition after an evidentiary hearing for abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 866.) Where there is conflicting evidence, we reverse only if the evidence compels a finding for the appellant as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1529.)

The best interests of the child are of paramount consideration when a modification petition is brought--as it was here--*after* termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this juncture, the juvenile court looks not to the *parent's* interests in reunification but to the needs of the *child* for permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "[W]hen a child has been placed in foster care because of parental neglect or incapacity, after an extended period of foster care, it is within the

court's discretion to decide that a child's interest in stability has come to outweigh the natural parent's interest in the care, custody and companionship of the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

The " 'escape mechanism' " provided by section 388 after reunification efforts have ceased is only available when a parent has *completed a reformation* before parental rights have been terminated. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528.) This is because, if a parent's circumstances have not changed sufficiently to permit placement of the child with that parent, reopening reunification "does not promote stability for the child or the child's best interests" when the child is otherwise adoptable. (*In re Casey D., supra*, 70 Cal.App.4th at p. 47.)

B. Analysis

Here, the juvenile court found that although mother's circumstances were changing, they had not yet changed. The court correctly noted that the mere suggestion of ongoing change is "insufficient grounds to delay permanency for a child whose parent has failed to reunify in the past." At the time of the contested hearing, mother had been in recovery for less than three months. She was still in residential treatment and was on step four of 12 steps. Although this was a commendable *start* to recovery, it was far from a completed recovery. There was no indication that she was currently able to parent the minor. Nor was there any indication that reopening reunification was in the minor's best interests.

The minor was removed in July 2013 at the age of two months, after mother's extensive history of drug abuse had caused the minor to be born with methamphetamine in her system and mother had continued her drug and alcohol use through the first two months of the minor's life. Mother's services were terminated in March of 2014, at which time it was clear she was not compliant with any of her services and was still abusing drugs. She was not visiting her baby regularly, let alone taking any of the court-ordered steps to secure a safe and stable environment for her child. Not until May did she

even enroll in her current (as of the August 2014 orders on appeal) program. By then, her child was one year old and had lived with her barely two months of her life. As mother herself recognized at the hearing, her own actions had “kept [the minor’s] mom away from her for the past 13 months.”

Given these circumstances, the juvenile court’s finding of “changing,” as opposed to “changed,” circumstances after less than three months of sobriety and five months of regular monthly visits was well within the court’s discretion.

II

Beneficial Parental Relationship Exception

Mother next contends the juvenile court erred by finding that the beneficial parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. To the contrary, substantial evidence supports the juvenile court’s finding.

A. The Law

At the selection and implementation hearing, the juvenile court must choose one of four alternative permanent plans for a minor. The permanent plan preferred by the Legislature is adoption. If the minor is adoptable, the court must terminate parental rights absent a showing of detriment to the minor. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 998; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) We uphold a juvenile court’s ruling declining to find such an exception if the ruling is supported by substantial evidence. (*In re Zachary G.*, at p. 809.)

To prove the beneficial parental relationship exception applies, mother must show she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) It is not enough simply to show “some benefit to the child from a continued relationship with the parent,

or some detriment from termination of parental rights.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349.) There must be a significant, positive emotional attachment between mother and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

B. *Analysis*

The evidence firmly establishes that mother neither maintained regular visitation and contact with the minor, nor established in the juvenile court that the minor would benefit from continuing the relationship.

As detailed *ante*, mother was initially provided supervised visits twice a week when the minor was detained in July 2013. She missed visits, cancelled visits, and simply failed to attend visits, sometimes without explanation or warning, through the fall of that year. In 2014, her visitation record was spotty at best; in May of that year her visitation schedule was reduced to once a month due to “issues with consistency in attendance” and she visited the minor only twice from the time her services were terminated in March 2014 to the July 8, 2014, date of the Department’s section 366.26 report. Even assuming mother visited once a month from March through August 2014, as she claimed at the hearing, there is no evidence of “regular visitation and contact” with the minor during the bulk of mother’s time away from the minor--July 2013 through August 2014.

Further, mother presented *no* evidence establishing any benefit to the minor from continuing the relationship, and we see none. Rather, all evidence points to the conclusion that mother never established, let alone maintained, a parental relationship with the minor. Instead, she had been largely absent from the first 15 months of the

minor's life. The juvenile court did not abuse its discretion by finding the beneficial parental relationship exception to adoption did not apply.

DISPOSITION

The juvenile court's orders are affirmed.

DUARTE, J.

We concur:

MAURO, Acting P. J.

HOCH, J.